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NYCLA Ethics Committee Concludes NY Lawyers May Not Ethically Collect Whistleblower Bounties
Association Issues Opinion on Ethical Conflicts Caused by Lawyers as Whistleblowers under Dodd-Frank

New York, NY—October 7, 2013—The Professional Ethics Committee of the New York County Lawyers' Association (NYCLA) today issued NYCLA Ethics Opinion 746, "Ethical Conflicts Caused by Lawyers as Whistleblowers under Dodd-Frank". The Association posed the question, “May a New York lawyer ethically participate in the whistleblower bounty program under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 by revealing confidential information about the lawyer’s client and then seek a bounty?” The Committee’s conclusion is that such disclosures would give rise to ethical issues that would presumptively prevent a New York lawyer, acting as a lawyer for a client, from receiving whistleblower bounties in situations in which the lawyer reveals client confidences.

Under regulations recently promulgated by the Securities and Exchange Commission, whistleblowers who report material securities violations by their clients to the government can recover up to 30 percent of the ultimate fine levied by the SEC, which can range from $100,000 to millions of dollars. While generally prohibiting lawyers from collecting whistleblower bounties in exchange for revealing client confidences, the SEC regulations do permit lawyers to collect bounties, among other grounds, in order to prevent an issuer of securities from committing a material violation of securities laws.

“Revealing client confidences to the government in exchange for bounty payments gives rise to ethical issues for New York lawyers for two reasons,” said Barry Temkin, Co-Chair of NYCLA’s Professional Ethics Committee. “First, New York lawyers presumptively may not ethically collect whistleblower bounties in exchange for disclosing confidential information about their clients because doing so may give rise to a conflict between the lawyers’ personal interests and those of the client.”

In addition, the opinion states that New York lawyers may not disclose confidential information, relating to current or past clients, under the Dodd-Frank whistleblower regulations, except to the extent permissible under the confidentiality provisions of the New York Rules of Professional Conduct. This conclusion is the same for current and former lawyers, whether in-house or outside counsel. NYCLA Ethics Opinion 746 is limited to New York lawyers who are acting as attorneys on behalf of clients. To view the entire opinion, see https://www.nycla.org/index.cfm?section=News_AND_Publications&page=Ethics_Opinions.

About the New York County Lawyers’ Association
The New York County Lawyers’ Association (www.nycla.org) was founded in 1908 as the first major bar association in the country that admitted members without regard to race, ethnicity, religion or gender. Since its inception, it has pioneered some of the most far-reaching and tangible reforms in American jurisprudence and has continuously played an active role in legal developments and public policy.

The Association’s Professional Ethics Committee is the oldest bar association ethics committee in the country and, starting in January 1912, the first to issue written ethics opinions. More recent initiatives include the establishment of the NYCLA Ethics Institute in 2008, which offers substantive CLE programs on diverse topics each month, with each program having a strong ethics component.

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